BAGAN SERAI HOUSING ESTATE SDN BHD *a*

v.

PENTADBIR TANAH DAERAH, DAERAH SEBERANG PERAI TENGAH & ANOR

b

HIGH COURT MALAYA, PENANG
RK NATHAN J
[CIVIL SUIT NO: 22-130-96]
17 OCTOBER 2001

LAND LAW: *Forfeiture - Validity of - Whether defence of Land Administrator valid - National Land Code 1965, ss. 16, 22, 134* *c*

LAND LAW: *Land Administrator - Liability of - Forfeiture proceedings - Whether action may be brought against - National Land Code 1965, ss. 16, 22, 134* *d*

The plaintiff was at all material times the registered owner of a piece of 64-acre land ('the property') while the defendants were officers appointed by the state authority of Penang under the relevant provisions of the National Land Code 1965 ('the NLC'). On 4 January 1980, United Malayan Banking Corporation Bhd entered a lien-holder's caveat on the register document of title. Later that year about 4.8 acres of the property were acquired by the state authority of Penang under the Land Acquisition Act 1960, and in 1983 another 5 acres were acquired by the same authority under the same Act. The plaintiff subsequently discovered that the said property had been acquired by the state authority. *e* *f*

The plaintiff contended that the entire forfeiture proceedings were wrong, being contrary to the provisions of the NLC, *viz*, that no notice of demand in Form 6A was at any time served on the plaintiff pursuant to s. 97 of the NLC, and that the amount demanded by the defendants under the purported notice was far in excess of what was lawfully due. *g*

The defendants on the other hand relied on s. 22 of the NLC which states that 'no officer … shall be liable to be sued in any civil court for any act or matter done … in good faith and in the intended exercise of any power … conferred or imposed on him by or under this Act.' The issue for consideration centered on the defence under s. 22 of the NLC. *h*

i

Held:

[1a] Section 134 of the NLC which deals with forfeiture proceedings provides in subsection (1) that 'The validity of any forfeiture … shall not be challenged in any court except by means of ... an appeal under s. 418 against the order of the Land Administrator under s. 100 or s. 129.' Section 134(4) NLC however provides that 'The provisions of subsection (1) shall not affect the right of any person or body to bring an action of damages against the State Authority, or against any officer appointed by the State Authority, in respect of any act or thing wrongfully done ... in connection with any forfeiture under this Act.' (pp 243 h-i & 244 a-h)

[1b] Section 134(4) NLC clearly spells out the distinction that applies to the liability of the state authority and an officer appointed by the state authority. The right to sue the state authority or the officer appointed by the state authority is disjunctive. The proviso relating to s. 22 NLC is expressly applicable only and in respect of the liability of the office of the state authority. This view is fortified by s. 16(2) of the NLC which provides that 'Any action, suit or other proceeding relating to land in which it is sought to establish any liability on the part of the State Authority shall be brought against the State Director in the name of his office.' (pp 243 h-i & 244 a-h)

[2] The defence provided by s. 22 of the NLC was not open to the defendants. Therefore the Pentadbir Tanah Daerah Seberang Perai Tengah being the Land Administrator having charge of the district where the subject property is, is named as the first defendant in his capacity as the authority which initiated the proceedings resulting in the eventual forfeiture of the said subject property. The Pengarah Tanah dan Galian Penang, being the State Director of Land and Mines, is named as the second defendant in the capacity of his office in whose name any action to establish any liability on the part of the state authority is to be brought. (pp 243 h-i & 244 a-h)

[Matter to proceed on its merits.]

Case(s) referred to:

Government of the State of Negeri Sembilan & Anor v. Yap Chong Lan & Ors [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144 ***(refd)***

Yow Hing & Anor v. Registrar of Titles, Malacca [1981] 1 MLJ 155 ***(foll)***

Legislation referred to:

National Land Code, ss. 16(2), 22, 97(2), 100, 111, 129, 130(2), 134(4), 418, Forms 6A, 8A, Schedule IX

Other source(s) referred to:

David SY Wong, *Tenure and Land Dealings in the Malay States*, 1975 edn, p 408

For the plaintiff - Yeoh JA (Mohd Hussain Ibrahim); M/s Mohd Hussain Ibrahim & Co

For the defendants - Alizatul Khair

Reported by Mariette Peters-Goh

JUDGMENT

RK Nathan J:

Facts

The plaintiff was at all material times the registered owner of land known as lot No. 406, Mukim 1, Province Wellesley Central, estimated to contain an area of 64.3022 acres (the property). The defendants are officers appointed by the State Authority of Penang under the relevant provisions of the National Land Code 1965 (the NLC). On 4 January 1980 the United Malayan Banking Corporation Bhd (UMBC) entered a lien holder's caveat on the register document of title of the said property for the reason set out in the form of the caveat. Sometime in 1980 about 4.824 acres of the said property were acquired by the State Authority of Penang under the Land Acquisition Act 1960 and in 1983 about 5.109 acres of the said property were further acquired by the same authority and under the same Act. Following the aforesaid acquisition the said property was resurveyed and a new lot No. 4382 was allotted for the balance portion of the said property (the said balance). Whilst the plaintiff contended that it was not notified of any of the aforesaid steps and action taken by the relevant departments, the defendants contended that they were under no obligation to so notify the plaintiff. Subsequently the plaintiff discovered that the entire said balance had been forfeited by the first defendant on 29 April 1993. Later the same said balance was alienated by the State Authority of Penang to a third party. It was the plaintiff's belief that the said third party had agreed to pay a premium of about RM27,000,000 as consideration for the said alienation. From a search made of the records at the Registry of Land Titles Penang, the plaintiff discovered that:

(a) the 1st defendant allegedly issued a purported Notice in Form 6A dated 10 December 1992 demanding arrears of quit rent, notice fee and penalty for Lot 4382, Mukim 1, Province Wellesley Central;

(b) the 1st defendant allegedly forwarded the Notice in Schedule IX (r. 35), National Land Code 1965 dated 26 December 1992 to the Registrar of Land Titles, Penang and requested the latter to enter a note of service of the said Notice on the Register Document of Title of Lot 4382, Mukim 1, Province Wellesley Central pursuant to s. 97(2) of the NLC;

(c) the said Notice in Form 6A dated 10 December 1992 was published in the Penang State Gazette Notification No. 454 dated 31 December 1992;

(d) the 1st defendant issued a Notice in Form 8A dated 7 April 1993 declaring Lot 4382, Mukim 1, Province Wellesley Central forfeited to the State Authority under s. 130 of the NLC. The said Notice alleged that the aforesaid lot was held under the Interim Register Title;

(e) the said Notice in Form 8A dated 7 April 1993 was published in the Penang State Gazette Notification No. 115 dated 29 April 1993;

(f) a note of alleged service of Notice in Form 6A dated 10 December 1992 on the plaintiff was endorsed by the Registrar of Land Titles, Penang on the Register Document of Title of Lot 406, Mukim 1, Province Wellesley Central on 17 May 1993;

(g) a memorial of the forfeiture of Lot 4382, Mukim 1, Province Wellesley Central was registered by the Registrar of Land Titles, Penang on the Register Document of Titles of Lot 406, Mukim 1, Province Wellesley Central on 17 June 1993 purportedly under s. 130(2) of the NLC;

(h) Subsequently on a date unknown both the entries referred to in paras. 11(f) and 11(g) referred to above were cancelled by the Registrar of Land Titles, Penang with a note "SALAH DIMASUKI" (WRONGLY ENTERED);

(i) subsequently on a date unknown both the entries referred to in paras. 11(f) and 11(g) were endorsed again on the Register Document of Title of Lot 4382, Mukim 1, Province Wellesley Central but without the signature of the Registrar of Land Titles, Penang;

(j) On 30 May 1995 a memorial was endorsed by the Registrar of Land Titles, Penang on the Register Document of Title on Lot 4382, Mukim 1, Province Wellesley Central stating that UMBC disclaimed any interest or right under the Lien Holder's Caveat referred to in para. 6 above.

Case For The Plaintiff

It is the plaintiff's case that the entire forfeiture proceedings is wrong, being contrary to the provisions of the NLC for the following reasons namely:

(a) that no notice of demand in Form 6A dated 10 December 1992 of the NLC was at any time served on the plaintiff pursuant to s. 97 of the NLC at the plaintiff's registered office;

(b) that the amount demanded by the 1st defendant under the purported notice in Form 6A dated 10 December 1992 was far in excess of what was lawfully due;

(c) that the said notice of demand refers to Lot 4382, Mukim 1, Province Wellesley Central in respect of which no register document of title was in existence at the material time;

(d) that there was non-compliance with s. 97(2) of the NLC;

(e) that the purported Notice of Forfeiture dated 7 April 1993 (in Form 8A) refers to Lot 4382, Mukim 1, Province Wellesley Central in respect of which no register document of title was in existence at the material time;

(f) that there was non-compliance with s. 130(2) of the NLC;

(g) that there was non-compliance with s. 100 of the NLC.

The plaintiff therefore prayed for:

(a) a declaration that the entire forfeiture proceedings of the plaintiff's land known as Lot 4382, Mukim 1, Province Wellesley Central, Penang is wrongful and by reason thereof the plaintiff is entitled to claim damages from the State Authority of Penang pursuant to s. 134(4) of the NLC;

(b) an order that the senior assistant registrar of this court be directed to hold an inquiry to assess the damages sustained by the plaintiff as a consequence of the matters set out above;

(c) interest on the damages so assessed under the Civil Law Act 1956;

(d) Costs.

Case For The Defence

Whilst contending that their actions were based on the NLC the linch-pin of the defence was the protection accorded under s. 22 of the NLC.

Findings Of The Court

On the day fixed for hearing, by consent the parties agreed that the court ought to decide on the defence of s. 22 of the NLC raised by the defendants before proceeding into the merits of the case.

In order to do so it is relevant to reproduce s. 22 of the NLC which reads as follows:

> No officer appointed under this Part shall be liable to be sued in any civil court for any act or matter done, or ordered to be done or omitted to be done, by him in good faith and in the intended exercise of any power, or performance of any duty, conferred or imposed on him by or under this Act.

Dato' Alizatul Khair for the defendants referred the court to s. 134(4) of the NLC. It is relevant therefore to reproduce the said sub-section and the related sub-s. (1) which reads as follows:

> 134 (1) The validity of any forfeiture under this Act shall not be challenged in any court except by means of, or in proceedings consequent upon, an appeal under section 418 against the order of the Land Administrator under section 100 or, as the case may be, 129; and, notwithstanding anything in any other written law, no such appeal shall be commenced after the expiry of the period of three months allowed for the bringing thereof by the said section 418.
>
> (2) –
>
> (3) –
>
> (4) The provisions of subsection (1) shall not affect the right of any person or body to bring an action of damages against the State Authority, or (subject to the provisions of section 22) against any officer appointed by the State Authority, in respect of any act or thing wrongfully done, or ordered to be done or omitted to be done, in connection with any forfeiture under this Act.

The learned State Legal Adviser thus argued that the defendants were clothed with immunity from being sued. She also pointed out that the plaintiff had not pleaded nor averred bad faith against the defendants. In further support she relied on *Tenure and Land Dealings in the Malay States* by David S.Y. Wong (1975 Edition) wherein the learned author said at p. 408 as follows:

> Read together with those provisions of the Government Proceeding Ordinance, 1956 the position is plainly that a person who has been deprived of his title or interest in land under the National Land Code as a result of an error occurring in the Land Office, cannot institute an action for damages against the officer concerned personally nor against the Government unless the error has been made by the officer not acting in good faith.

It is important to point out the danger of relying on old texts because in *Yow Hing & Anor. v. Registrar of Titles, Malacca* [1981] 1 MLJ 155 the then Federal Court canvassed this very same issue and said at p. 160 as follows:

> The learned judge then *suo motu* took the point not raised by either side that setting aside the forfeiture would in fact be tantamount to recovery of the land from the State Authority and that this is prohibited by section 29 of the Government Proceedings Ordinance, referring in this connection specifically to the provisions of section 29(1) proviso (b) and (2) thereof. We must wholly dissent. Section 29 of the Government Proceedings Ordinance has no relation or relevance whatsoever to the proceedings instituted by the appellants and no question of recovery of the land arises. Section 134 clearly empowers a challenge to be made by the stipulated procedure to the validity of any forfeiture under the Code and provides for such forfeiture to be set aside on the grounds specified therein, and to hold as the learned judge did would be to fly in the face of that provision in the Code and conclude on a fallacy that there is in fact an inconsistency and conflict between that provision and section 29 of the Government Proceedings Ordinance when in fact there is none.
>
> Even assuming for a moment for the sake of argument that setting aside a forfeiture under the Code would amount to proceedings against the Government of the State of Malacca for the recovery of land, what proviso (b) of section 29(1) of the Government Proceedings Ordinance debars is an order as such for the recovery of land but it permits in lieu thereof an order declaring that the plaintiff in any such proceedings is entitled as against the Government to the land which is exactly the effect of any order of court made under section 134(2) setting aside the order of the Collector declaring the land forfeit to the State Authority.

Mr. Yeoh for the plaintiff argued that s. 22 of the NLC must be read together with s. 134(4) to realise the full impact of the meaning behind the sections. He argued that if the action was brought against the officer of the State then s. 22 required that a plea of bad faith on the part of the officer ought to be raised. Having considered the arguments of both sides I am of the view that s. 134(4) clearly spells out the distinction that applies to the liability of the State Authority and an officer appointed by the State Authority. The right to sue the State Authority or the officer appointed by

the State Authority is disjunctive. However the proviso relating to s. 22 is expressly applicable only and in respect of the liability of the officer of the State Authority. If it was the intention of the legislature to also give the same protection to the State Authority then surely sub-s. (4) would have been worded like this:

> (4) the provision of subsection (1) shall not affect the right of any person or body to bring an action of damages **(subject to the provisions of section 22)** against the State Authority or against any officer appointed by the State Authority ... (emphasis added).

I am further fortified in holding this view because of s. 16(2) of the NLC which reads as follows:

> Any action, suit or other proceeding relating to land in which it is sought to establish any liability on the part of the State Authority shall be brought against the State Director in the name of his office.

Needless to say it was this requirement of the law that made it incumbent upon the plaintiff to sue the State Director and the Federal Court in *Government of the State of Negeri Sembilan and Anor v. Yap Chong Lan & 12 Ors.* [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144 made it clear that the State Government as such has nothing to do with proceedings under the NLC because it is the State Authority that is the pertinent entity and that the State Government should never have been joined in the proceedings.

However in *Yow Hing & Anor. v. Registrar of Titles, Malacca (supra)* the Federal Court made no distinction between the acts of the officers and the State Authority that was being sued. I am satisfied that in this case the Pentadbir Tanah Daerah Seberang Perai Tengah being the Land Administrator having charge of the district where the subject property is, is named as the 1st defendant in his capacity as the authority which initiated the proceedings resulting in the eventual forfeiture of the said subject property. I am also satisfied that the Pengarah Tanah dan Galian Penang, being the State Director of Land and Mines is named as the 2nd defendant in the capacity of his office in whose name any action to establish any liability on the part of the State Authority is to be brought. In the circumstances, it is my judgment that the defence provided by s. 22 of the NLC is not open to the defendants. The matter will proceed on its merits.